

HOUSE BILL 199  
By Turner M

AN ACT to enact the Fiscal Accountability in Economic Development Act of 2003 and to amend Tennessee Code Annotated, Title 4, Chapter 17.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 17, is amended by adding the following as a new, appropriately designated part:

§ 4-17-501. This act shall be known and may be cited as the "Fiscal Accountability in Economic Development Act of 2003".

§ 4-17-502.

(a) The legislature finds:

(1) Although the state and its local government units have granted numerous economic development subsidies in the last twenty-five (25) years, the real wage levels and health care coverage of working families have declined.

(2) When workers receive low wages and poor benefits, such jobs often impose hidden taxpayer costs upon the state, in the form of health care, food stamps, earned income tax credits, and other forms of public assistance to the working poor and their families.

(3) Citizen participation in economic development has been impeded by a lack of readily accessible information regarding expenditures and outcomes.

(4) It is necessary to collect, analyze and make public information regarding those expenditures for economic development, and to enact certain safeguards for their use.

(b) The purpose of this act is to improve the effectiveness of economic development expenditures and to ensure that such expenditures raise living standards for working families.

§ 4-17-503.

(1) "Corporate parent" means any person, association, corporation, joint venture, partnership, or other entity, that owns or controls fifty percent (50%) or more of a recipient corporation.

(2) "Date of subsidy" means the date that a granting body provides the initial monetary value of a development subsidy to a recipient corporation unless the subsidy is for installation of new equipment or improvements to property. If the subsidy is for installation of new equipment, such date shall be the date the corporation puts the equipment into service. If the subsidy is for improvements to property, such date shall be the date the improvements are finished, or the date the corporation occupies the property, whichever is earlier.

(3) "Development subsidy" means any expenditure of public funds with a value of at least twenty-five thousand dollars (\$25,000), for the purpose of stimulating economic development within the state, including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones, tax increment financing, fee waivers, land price subsidies, matching funds, property tax incentives, and tax credits.

(4) "Full-time job" means a job in which an individual is employed by a recipient corporation for at least thirty-five (35) hours per week.

(5) "Granting body" means any agency, department, board, office, corporation, authority, political subdivision, or instrumentality of the state or a local government unit that provides a development subsidy.

(6) "Local government unit" means any county, metropolitan government, incorporated town or city, including all agencies, departments, boards, commissions, authorities, special districts, and other bodies that carry out local government functions and programs.

(7) "Part-time job" means a job in which an individual is employed by a recipient corporation for less than thirty-five (35) hours per week.

(8) "Project site" means the site of a project for which any development subsidy is provided.

(9) "Recipient corporation" means any person, association, corporation, joint venture, partnership, or other entity that receives a development subsidy.

(10) "Small business" means a corporation whose corporate parent, and all subsidiaries thereof, employed fewer than twenty (20) full-time employees, or had total gross receipts of less than one million dollars (\$1,000,000) during the previous calendar year.

(11) "State" means the state of Tennessee, including all state agencies, departments, boards, commissions, authorities, development districts, and other bodies that carry out state functions and programs.

(12) "Subsidy value" means the face value of any and all development subsidies provided to a recipient corporation.

(13) "Temporary job" means a job in which an individual is hired for a season, or for a limited period of time.

§ 4-17-504.

The department of revenue shall submit an annual unified economic development budget to the general assembly no later than six (6) months after the end of the state's fiscal year. The report shall present all types of expenditures for economic development during the prior fiscal year, including but not limited to:

(a) The amount of uncollected tax revenues resulting from every corporate tax credit or property tax incentive provided by the state or a local governmental unit.

(b) The name of each corporate taxpayer that claimed any tax credit or property tax incentive in value equal to or greater than five thousand dollars (\$5,000), together with the dollar amount received by each such corporation.

(c) Any tax credit or property tax incentive claimed by a corporation of less than five thousand dollars (\$5,000) shall not be itemized. The department of revenue shall report an aggregate dollar amount of such expenditures and the number of corporations so aggregated for each such tax expenditure.

(d) All state appropriated expenditures for economic development, including line-item budgets for every state-funded entity concerned with economic development.

§ 4-17-505.

(a) Before November 1 of each year, the state board of equalization shall submit to the department of revenue copies of the annual reports submitted to it pursuant to § 7-53-305(e).

(b) Any local government unit that grants property tax incentives other than the payments in lieu of taxes reported pursuant to subsection (a) shall report to the department of revenue the amount of such incentives and the estimated tax revenue that the property would produce without such incentives in effect. The report shall also contain information including, but not limited to, the name of the property owner; the address of the property; and the start and end dates of the property tax incentives.

(c) The department of revenue shall annually compile and publish all of the data contained in the reports required under subsections (a) and (b) in both written and electronic form, including publication on the department's website.

§ 4-17-506.

(a) A development subsidy applicant shall complete an application for the subsidy on a form prepared by the department of economic and community development. The information required on the application shall include the following:

(1) An application tracking number provided by the granting agency for the project;

(2) The name, street and mailing address, and phone number of the chief executive officer of the granting body provided by the granting agency;

(3) The name, street and mailing address, and phone number of the chief executive officer of the applicant's corporate parent;

(4) The name, street and mailing address, and phone number of the chief executive officer of the applicant;

(5) The street address of the project site;

(6) The three-digit North American Industry Classification System number of the project site;

(7) The total number of individuals employed by the applicant at the project site on the date of the application, broken down by full-time, part-time, and temporary positions;

(8) The total number of individuals employed in the state by the applicant's corporate parent, and all subsidiaries thereof, as of December 31 of the prior fiscal year, broken down by full-time, part-time and temporary positions;

(9) The development subsidy or subsidies being applied for with the granting body, and the value of such subsidy or subsidies;

(10) The number of new jobs to be created by the applicant at the project site, broken down by full-time, part-time, and temporary positions;

(11) The average hourly wage to be paid to all current and new employees at the project site, broken down by full-time, part-time, and temporary positions, and further broken down by wage groups as follows: six dollars (\$6.00) or less an hour, six dollars and one cent (\$6.01) to seven dollars (\$7.00) an hour, seven dollars and one cent (\$7.01) to eight dollars (\$8.00) an hour, eight dollars and one cent (\$8.01) to nine dollars (\$9.00) an hour, nine dollars and one cent (\$9.01) to ten dollars (\$10.00) an hour, ten dollars and one cent (\$10.01) to eleven dollars (\$11.00) an hour, eleven dollars and one cent (\$11.01) to twelve dollars (\$12.00) an hour, twelve dollars and one cent (\$12.01) to thirteen (\$13.00) an hour, thirteen dollars and one cent (\$13.01) to fourteen dollars (\$14.00) an hour, and fourteen dollars and one cent (\$14.01) or more per hour;

(12) For project sites located in a metropolitan Statistical area, as defined by the federal office of management and budget, the average hourly wage paid to non-managerial employees in the state for the industries involved at the project, as established by the U.S. bureau of labor statistics;

(13) For project sites located outside of metropolitan statistical areas, the average weekly wage paid to non-managerial employees in the county for industries involved at the project, as established by the U.S. department of commerce;

(14) The type and amount of health care coverage to be provided by the applicant within ninety (90) days of commencement of employment at the project site, including any costs to be borne by the employees;

(15) A list of all development subsidies that the applicant is requesting, and the name of any other granting body from which such subsidies are sought;

(16) A statement as to whether the development subsidy may reduce employment at any other site controlled by the applicant or its corporate parent, within or without the state, resulting from automation, merger, acquisition, corporate restructuring, or other business activity;

(17) A statement as to whether the project involves the relocation of work from another address and if so, the number of full-time, part-time and temporary jobs to be relocated, and the address from which they are to be relocated; and

(18) A certification by the chief executive officer of the applicant as to the accuracy of the application.

(b) If the granting body approves the application, it shall send a copy to the department of economic and community development within fifteen (15) days of such approval. If the application is not approved, the granting body shall retain the application in its records for five (5) years.

§ 4-17-507.

(a) Each granting body shall file a progress report with the department of economic and community development for each project for which a development subsidy has been granted, no later than February 1 each year. The report shall include the following information:

(1) The application tracking number;

(2) The name, street and mailing addresses, phone number, and chief executive officer of the granting body;

(3) The name, street and mailing addresses, phone number, and chief executive officer of the recipient corporation;

(4) A summary of the number of jobs required, created and lost, broken down by full-time, part-time and temporary positions, and by wage groups as defined in § 4-17-506(a)(11);

(5) The type and amount of health care coverage provided to the employees at the project site, including any costs borne by the employees;

(6) The comparison of the total employment in the state by the recipient's corporate parent on the date of the application and the date of the report, broken down by full-time, part-time and temporary positions;

(7) A statement as to whether the use of the development subsidy during the previous fiscal year reduced employment at any other site controlled by the recipient corporation or its corporate parent, within or



without the state, as a result of automation, merger, acquisition, corporate restructuring or other business activity; and

(8) A signed certification by the chief executive officer of the recipient corporation as to the accuracy of the progress report.

(b) On all subsequent annual progress reports, the granting body shall indicate whether the recipient corporation is still in compliance with its job creation, wage, and benefit goals.

(c) Granting bodies and recipient corporations shall file annual progress reports for the duration of the subsidy, or not less than five (5) years, whichever period is greater.

(d)

(1) No later than fifteen (15) days after the second anniversary of the date of subsidy, the granting body shall file a two-year progress report with the department of economic and community development, and include the same information as required under subsection (a). The recipient corporation shall certify as to the accuracy of such report.

(2) The granting body shall state in the two-year report whether the recipient corporation has achieved its job creation, wage, and benefit goals, and whether the corporate parent has maintained ninety percent (90%) of its employment in the state.

(e) The department of economic and community development shall compile and publish all data from the progress reports in both written and electronic form, including publication on the department's website.

(f) The granting body and the department of economic and community development shall have access at all reasonable times to the project site and the

records of the recipient corporation in order to monitor the project and to prepare progress reports.

(g) A recipient corporation that fails to provide the granting body with the information or access required under this section shall be subject to a civil penalty of not less than five hundred dollars (\$500) per day to commence within ten (10) working days after the February 1 deadline, and of not less than one thousand dollars (\$1,000) per day to commence twenty (20) days after such deadline.

§ 4-17-508.

(a) A granting body shall not award a development subsidy if the annual cost per job is greater than thirty-five thousand dollars (\$35,000). Such cost shall be determined by dividing the amount of the subsidy by the number of full-time jobs required under the application approved by the granting body.

(b) A granting body shall not grant a subsidy to an applicant unless the wages paid to employees at the project site are equal to or exceed eighty-five percent (85%) of the average wage as established under § 4-17-506(a)(12) and (a)(13); except that for small businesses, the average wage must equal or exceed seventy-five percent (75%) of the wages established thereunder. The computation of wages under this section shall only apply to a recipient corporation that provides the health care coverage as approved in its application by the granting body.

§ 4-17-509.

(a) A recipient corporation shall fulfill its job creation, wage, health care and other benefit goals for the project site within two (2) years of the date of subsidy. Such recipient shall maintain its wage and benefit goals as long as the subsidy is in effect, or five (5) years, whichever is longer.

(b) The corporate parent of a recipient corporation shall maintain at least ninety percent (90%) of its employment in the state as long as the development subsidy is in effect, or five (5) years, whichever is longer.

(c) If the requirements under subsections (a) or (b) are not fulfilled, the granting body shall recapture the development subsidy from the recipient corporation as follows:

(1) Upon a failure by the recipient corporation to create the required number of jobs, or to pay the required wages or benefits, the amount recaptured shall be based on the pro rata amount by which the unfulfilled jobs, wages or benefits bear to the total amount of the development subsidy.

(2) Upon a failure of the corporate parent to maintain ninety percent (90%) of its employment in the state, the rate of recapture shall equal the lesser of one hundred percent (100%) of the development subsidy or twice the percentage by which such employment is less than ninety percent (90%).

(d) A granting body shall provide notice and explanation to a recipient corporation of its intent to recapture a development subsidy and state the amount to be recaptured. The recipient corporation shall remit to the governing body such amount within sixty (60) calendar days of the date of such notice.

(e) If a recipient corporation fails to fulfill its goals for the development subsidy in three (3) consecutive calendar years, the granting body shall declare the subsidy null and void, and shall so notify the department of economic and community development and the recipient corporation. The recipient corporation shall pay back to the granting body all remaining value of the development

subsidy it has not previously repaid within one hundred eighty (180) calendar days of the date of the notice of such default.

(f) Prior to any recapture of all or part of a development subsidy, the granting body shall provide the recipient corporation with a hearing as to the intended recapture.

§ 4-17-510. All records required to be prepared or maintained under this section, including, but not limited to applications, progress reports, recapture notices, and any other records or proceedings relating thereto, shall be public records open to public inspection.

§ 4-17-511. The commissioner of the department of revenue and the commissioner of the department of economic and community development are authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect July 1, 2003, the public welfare requiring it.